

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte RICHARD LEINFELLNER, KARL FITZHUGH and JEFFREY GAMON

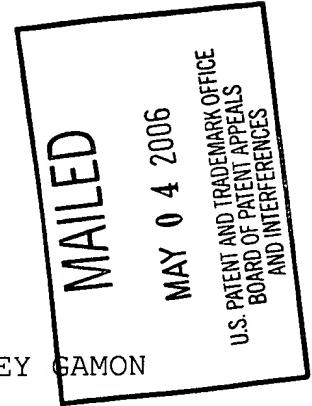
Application No. 09/495,622

ORDER RETURNING UNDOCKETED APPEAL TO THE EXAMINER

This application was electronically received at the Board of Patent Appeals and Interferences on April 8, 2006. An in-depth review has revealed that the application is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the examiner. The matters requiring attention prior to docketing are identified below:

The appellants filed an amendment under 37 CFR § 1.116 on April 18, 2005. It is not clear from the Official record as to whether the amendment has been approved for entry. Clarification is required.

Further review of the application reveals that the Appeal Brief filed on November 1, 2004 does not comply with the new rules under 37 CFR § 41.37(c).



37 CFR § 41.37(c) in-part states:

. . . . Appellant must file a brief under this section within two months from the date of filing the notice of appeal under § 41.31.

. . . . The brief shall contain the following items under appropriate headings and in the order indicated in paragraphs (c)(1)(i) through (c)(1)(x) of this section

. . . .

(ix) Evidence appendix. An appendix containing copies of any evidence submitted pursuant to §§ 1.130, 1.131, 1.132 of this title or of any other evidence entered by the examiner and relied upon by appellant in the appeal, along with a statement setting forth where in the record that evidence was entered in the record by the examiner. Reference to unentered evidence is not permitted in the brief. See § 41.33 for treatment of evidence submitted after appeal. This appendix may also include copies of the evidence relied upon by the examiner as to grounds of rejection to be reviewed on appeal.

(x) Related proceedings appendix. An appendix containing copies of decisions rendered by a court or the Board in any proceeding identified pursuant to paragraph (c)(1)(ii) of this section.

The following sections are missing from the Appeal Brief filed March 15, 2005:

(10) **Evidence Appendix** as stated in 37 CFR § 41.37(c)(1)(ix); and

(11) **Related Proceedings Appendix** as stated in 37 CFR § 41.37(c)(1)(x).

It is required that a supplemental Appeal Brief be submitted that is in compliance with 37 CFR § 41.37(c).

Accordingly, it is

ORDERED that the application is remanded to the examiner:

(1) to notify appellants to file a supplemental Appeal Brief in compliance with 37 CFR § 41.37 to include all required headings;

(2) to issue a response as to the status of the amendment after-final received April 18, 2005; and

(3) to have the above mentioned written communication(s) from the examiner scanned into the Official record; and

(4) for such further action as may be appropriate.

BOARD OF PATENT APPEALS
AND INTERFERENCES

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